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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Arnoldus Werner Johannes Oomen

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

OPSASNICK, MICHAEL N

ART UNIT

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2626

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DELIVERY MODE

05/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/885,707	Applicant(s) OOMEN ET AL.	
	Examiner MICHAEL N. OPSASNICK	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11 and 13-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 are directed to a method of calculating phase jitter and adding phase jitter amounts based upon the frequency and amplitude of a signal which does not fall into one of the enumerated four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

Claims 1-5 are not directed toward:

1) a process (nothing is processed/transformed, - a phase jitter is calculated and added; a statutory "process" under 35 USC 101 must (a) be tied to another statutory category (such as a manufacture or a machine), or (b) transform underlying subject matter (such as an article or material) to a different state or thing. Claims 1-5 are neither transform underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process.);

2) a machine – the claim steps are toward calculating a phase jitter and adding phase jitter to a signal - there are no claim elements towards an appropriate apparatus, e.g. the elements of a device that would perform the claim steps.

3) a manufacture (no claim elements pertain to an output product nor a

4) a composition of matter (the claims are toward calculation of phase jitter, and not a composition of matter).

Furthermore, claims 1-5 are directed to a method which calculates phase jitter, and as claimed, is a mathematical calculation/algorithm where the claims do not perform an underlying transformation of the underlying state to a different state or thing. If the acts of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter (Benson, 409 U.S. at 71-72, 175, USPQ at 676). Furthermore, claims define nonstatutory processes if they simply manipulate abstract ideas (Warmerdam, 33 F.3d at 1360,31 USPQ2d at 1759). As examples of statutory transformations of underlying subject matter (such as an article or material) to a different state or thing , (Alappat, 33 F.3d at 1542-4,31 USPQ2d at 1556-7), the claimed invention as a whole is directed to a combination of interrelated elements which combine to form a machine for converting discrete waveform data samples into antialiased pixel illumination intensity data to be displayed on a display means; in Arrhythmia,958 F.2d, 22USPQ at 1037, the claimed transformation of data represented the condition of a patient's heart; in State Street (149

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F.3d at 1373-73, 47 USPQ2d at 1601-02), the claimed transformation of data by a machine through a series of mathematical calculations into a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

Allowable Subject Matter

3. Claims 1-8,11 are allowable over the prior art of record (and claims 1-5 would be allowed once amended to overcome the 35 U.S.C. 101 rejections stated above).

4. The following is an examiner's statement of allowable subject matter:

As per the independent claims, the claim recitations pertaining to the transmission of phase jitter parameters, along with the other elements as claimed, is not explicitly taught by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 13-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Gersho et al (6475245).

As per claim 13, Gersho et al (6475245) teaches a coding unit configured to determine frequency and amplitude information of a sinusoidal component in a sound signal and phase jitter parameter associated with the sinusoid component (as a coding unit, fig. 4a, label 10) and a multiplexer (Fig. 4a, sub 56) that is configured to provide an output that includes sinusoidal parameters representing frequency and amplitude information and a phase jitter parameter representing phase jitter used to restore the sinusoidal component (Fig. 5, phase sync information used in the harmonic decoder for eventual use in the LP synthesizer)

As per claims 14-16, Gersho et al (6475245) teaches phase parameters transmitted with sinusoidal parameters, harmonically related, based on a differential between a phase parameters and a predicted phase parameter (as phase modeling to include phase changes from diff frames – col. 8 lines 48-63; including differential between 2 signals and phase interpolation).

As per claim 17, Gersho et al (6475245) teaches a receiver that is configured to receive sinusoidal parameters rep. frequency and amplitude, and phase information as well (as a receiver at the dmux – fig. 5, subblock 102); a synthesizer that is configured to restore the sinusoidal component based on phase -- fig. 5, subblock 120, based on phase sync information -- fig. 5, subblock 122.

Claims 18-21 are computer readable medium claims that perform the steps as claimed in device claims 13,15-17 and as such are similar in scope and content to the device claims 13,15-17; therefore, claims 18-21 are rejected under similar rational as presented against claims 13,15-17 above.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/
Primary Examiner, Art Unit 2626
5/10/09